IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1449 OF 2004

Bhiku Kashiba Kunjir
(since deceased through L.Rs.) ...Appellants

Vs.

Mhasku Manik Kunjir ...Respondent

Mr.S.V.Sadavarte for the Appellants
Mr.S.P.Thorat for the Respondent.

CORAM: A.S.OKA, J.
DATED: MARCH 31,2005.

P.C.:

1. Heard Advocates for the parties.

2. The Appeal is by the legal representatives of original Defendant. The challenge in the Second Appeal is to the decree for perpetual injunction passed by the Appellate Court against the original Defendant.

3. The Respondent-Plaintiff has placed reliance on the Consolidation scheme under Bombay Prevention of Fragmentation and Consolidation of Holdings Act,1947. It is not in dispute that the suit property is numbered as Block No.1223 in Consolidation scheme which stands in the name of the Respondent.

4. The learned Counsel for the Appellant relied upon the sale deeds allegedly executed in favour of the original Defendant and submitted that obviously there is an error

while making entries in consolidation scheme.

5. The Appellate Court has relied upon Section 36A of the said Act of 1947 and has rightly held that Civil Court cannot go into the question of legality and validity of the proceedings under the said Act of 1947. Placing reliance on consolidation scheme and the fact that the Block No.1223 stands in the name of the Respondent-Plaintiff, the Appellate Court passed a decree for perpetual injunction. On the basis of the consolidation scheme, the Appellate Court has accepted the title of the Respondent. So long as entry in the consolidation scheme stands, no fault can be found with the findings recorded by the Appellate Court as the said findings are based on the documentary evidence on record.

6. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

7. It is made clear that if the Appellants have any right to apply for variation or modification of consolidation scheme under the said Act of 1947, notwithstanding the dismissal of the Second Appeal it will be open for them to take out appropriate proceedings in accordance with the law.

8. Parties to act upon an authenticated copy of this order.

Judge.